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**In the Supreme Court of the United States**  
OCTOBER TERM, 1983

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STATE OF CALIFORNIA, PETITIONER

v.

CHARLES R. CARNEY

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*ON WRIT OF CERTIORARI TO THE  
SUPREME COURT OF CALIFORNIA*

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**BRIEF FOR THE UNITED STATES  
AS AMICUS CURIAE SUPPORTING PETITIONER**

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### **QUESTION PRESENTED**

Whether police officers violated the Fourth Amendment when they conducted a warrantless search based on probable cause of a "motor home" parked in a public parking lot adjacent to the street.

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INTEREST OF THE UNITED STATES

This case presents an important issue regarding the scope of the Warrant Clause of the Fourth Amendment and the so-called "automobile exception" to the warrant requirement. Although this is a state case, the Court's interpretation of the Fourth Amendment necessarily will have a significant impact on federal law enforcement as well. Federal officers frequently encounter in the course of their duties a wide variety of trucks, vans, and campers designed for or capable of being adapted to at least temporary "residential" use, and also favored as means of transporting illicit drugs or illegal aliens.

It is important that these officers be provided a clear and workable rule to guide them in dealing with such situations. The United States therefore has a substantial interest in the Court's resolution of the constitutional issue presented here.

### STATEMENT

On September 14, 1979, respondent was charged in an information filed by the District Attorney of San Diego County, California, with possession of marijuana for sale, in violation of Cal. Health & Safety Code § 11359 (West 1975). After moving unsuccessfully to suppress the evidence at issue here, respondent changed his not guilty plea to nolo contendere, and on January 8, 1980, he was sentenced to three years' probation. The California Court of Appeal affirmed respondent's conviction, but the California Supreme Court reversed (Pet. App. A1-A51).

1. The facts adduced at the preliminary hearing, which formed the evidentiary basis for the motion to suppress (see Pet. 3-4), established that Agent Robert Williams of the Drug Enforcement Administration was conducting surveillance of a suspected drug dealer in downtown San Diego. Agent Williams noticed respondent, who seemed out of place, approach and speak to a Mexican boy. Agent Williams then watched as respondent and the youth walked to a nearby parking lot and entered a Dodge Mini Motor Home parked there. They closed the curtains of the vehicle, including one across the front window (Pet. App. A3; Tr. 4-8, 10).<sup>1</sup>

Agent Williams had previously received information that that particular vehicle was involved in

<sup>1</sup> "Tr." refers to the transcript of the preliminary hearing of September 5, 1979.

drug activity, so he watched the motor home<sup>2</sup> and called additional agents. When the boy emerged about an hour and a quarter later, the officers stopped and questioned him. The boy told them that the occupant of the motor home had given him some marijuana in exchange for being allowed to perform oral sex on him. Pet. App. A3-A4; Tr. 8-10, 14-22.

The youth then returned with the agents to the motor home, where, at the agents' request, he knocked on the door. Respondent opened the door and stepped out. The agents identified themselves, and one of them, Agent Clem, stepped up on one step and looked inside the motor home to see if anyone else was there. Agent Clem then saw in plain view on a table just inside the doorway a bag of marijuana, some other plastic bags, and a scale. Agent Williams then arrested respondent, seized the motor home, and took photographs of its interior. The vehicle subsequently was driven to the Narcotics Task Force office, where an inventory search revealed additional marijuana in a cupboard and in the refrigerator. Pet. App. A4-A5; Tr. 23-35, 72-73.

2. The trial court denied the motion to suppress the evidence found in the vehicle, holding that the agents had probable cause and that the "automobile

<sup>2</sup> The opinion below refers to the vehicle involved in this case as a "motor home," without attempting to define the meaning of that term and without describing in detail the particular characteristics of the vehicle. As we argue below, there are substantial practical difficulties in attempting to draw a line between various kinds of vehicles on the basis of their degree of "homeness" in order to administer the legal principle on which the decision below rests. We use the term "motor home" without intending to concede that the vehicle respondent was using is properly classified as the functional equivalent of a fixed residence.

exception" therefore authorized a warrantless search. See Pet. App. A5-A6. The conviction was affirmed by the intermediate appellate court (Pet. 4), but the California Supreme Court reversed, holding that the search violated the Fourth Amendment.

The court did not take issue with the trial court's finding that, at the time they first entered the vehicle, the agents had probable cause to arrest respondent and to believe that the vehicle contained evidence of a crime. The court did find, however, that the failure to obtain a search warrant violated the Fourth Amendment. Specifically, the court held that the "so-called 'automobile exception'" to the warrant requirement was not applicable here because of the heightened privacy considerations inherent in a camper or motor home as opposed to an ordinary automobile (Pet. App. A9-A31). The court explained that the "mobility" of a vehicle "is no longer the prime justification for the automobile exception; rather, 'the answer lies in the diminished expectation of privacy which surrounds the automobile'" (*id.* at A14, quoting *United States v. Chadwick*, 433 U.S. 1, 12 (1977)). Because it concluded that a "motor home" was more like a home than an automobile with respect to an individual's reasonable expectation of privacy therein, the court held that, in the absence of some other special reason for dispensing with a warrant, a police officer is not permitted to search on the basis of probable cause without a warrant (Pet. App. A14-A30).<sup>3</sup>

Justice Richardson dissented (Pet. App. A46-A51). He explained that the majority's broad pronounce-

<sup>3</sup> The court also rejected the contention that the initial search by Agent Clem was justifiable as a "protective sweep" (Pet. App. A31-A46).

ments with respect to "motor homes" appeared to cover a wide spectrum of vehicles, some of which involve little, if any, more privacy expectation than an automobile (*id.* at A47-A48). Moreover, classifying a vehicle (such as a van) as either an automobile or a "motor home" depending on the particular circumstances, which would be a necessary task under the majority's decision, would be a difficult task for a police officer (*id.* at A48). Instead, Justice Richardson concluded that the treatment of a "motor home" should depend on whether the facts indicate that the vehicle is currently being used primarily as a residence or not (*id.* at A49-A50). Because the camper here—parked next to the street in a public parking lot—apparently was being used more as a vehicle than as a residence, Justice Richardson concluded that the warrantless search was valid under the "automobile exception."

#### INTRODUCTION AND SUMMARY OF ARGUMENT

The California Supreme Court's conclusion that a "motor home" is indistinguishable from a permanent residence in a building for purposes of the Warrant Clause rests on two faulty premises. First, the court errs in finding that the mobility of a vehicle, and consequent difficulty in securing it, plays virtually no role in the rationale for the established "automobile exception" and hence is irrelevant to the question whether resort to a warrant is necessary to conduct a probable cause search. Second, the court overlooks important considerations—and differences from permanent residences—in assessing the degree of privacy that an individual can reasonably expect in a motor home. The court's failure to consider these relevant factors results in a limitation on ef-

fective law enforcement that is unjustified by Fourth Amendment policies. Finally, the court's decision fails to identify with any precision what attributes of a vehicle change its character sufficiently to justify a warrant requirement. Thus, the decision fails to provide a clear and readily administrable rule for police officers to follow and threatens to open a Pandora's box of litigation over what types of vehicles or alterations made to vehicles qualify for "motor home" status.

Instead, the court should have recognized: (1) that the basis for the automobile exception is two-fold—both the reduced expectation of privacy in a vehicle and the difficulties engendered by its mobility justify relaxation of the warrant requirement; (2) an individual's expectation of privacy in a vehicle, even one that is capable of being used for residential purposes, cannot be equated with that of a permanent residence because of the public nature of vehicular travel and the regulatory intrusions and inspections to which all vehicles are subjected; and (3) that the competing interests should if possible be balanced by application of clear and readily administrable principles. When a vehicle subject to state motor vehicle registration laws is stopped on a public street or parked in a location inappropriate for residence, it is serving primarily a transportation function even if it can be characterized as a "motor home" and can be used as a residence. It is our submission that, in such circumstances, it should be subject to warrantless search on the basis of probable cause like other vehicles.

## ARGUMENT

### **A "MOTOR HOME" IS SUBJECT TO THE AUTOMOBILE EXCEPTION TO THE WARRANT REQUIREMENT WHEN THE CIRCUMSTANCES INDICATE THAT IT IS BEING USED PRIMARILY AS A TRANSPORTATION VEHICLE**

This case arises at the somewhat murky intersection between two well-settled doctrines of Fourth Amendment law: that, in the absence of consent or exigent circumstances, police officers are forbidden to conduct a search of a dwelling without antecedent judicial approval in the form of a search warrant; and that it is permissible to conduct warrantless probable cause searches of vehicles, vessels, and aircraft. While neither the opinion of the California Supreme Court nor the transcript of the hearing affords a particularly clear picture of the specific characteristics of respondent's "motor home," it is reasonably clear that it possessed some attributes of a residence not customarily possessed by automobiles, while at the same time, unlike an ordinary dwelling, it was fully mobile.

We acknowledge that there is some point at which a motor home, by virtue of its design and visible use—for instance, a large motor home manufactured with kitchen facilities and sleeping accommodations that is located at a campsite and connected to plumbing and electrical attachments—should be afforded the protections of a dwelling even though it remains potentially mobile. Conversely, it seems clear to us that there are many vehicles, such as small vans, that, although capable of being adapted to at least temporary residential use, are designed and customarily used primarily for transportation purposes and should not be differentiated from automobiles for

Fourth Amendment purposes. In between is a substantial array of vehicles that more or less lend themselves to occasional residential, as well as transportation, uses. The task of the Court is to enunciate a standard that gives due regard to the competing interests underlying the relevant Fourth Amendment doctrines while affording a manageable standard to guide law enforcement activities. The California Supreme Court has not struck the correct balance.

**A. The Mobility Of A Vehicle Traditionally Has Played A Significant Role In Assessing The Reasonableness Of A Warrantless Probable Cause Search**

The "automobile exception" was first recognized by this Court in *Carroll v. United States*, 267 U.S. 132 (1925). In that case, federal agents had evidence that two men frequently transported bootleg liquor in a particular car between Grand Rapids and Detroit, Michigan. When the agents unexpectedly encountered those men driving that car along that route, they stopped the car and searched it, finding 68 bottles of liquor hidden inside the seat backs. This Court held that the warrantless search of the car, as long as it was based upon probable cause, was reasonable under the Fourth Amendment. 267 U.S. at 147-156. The Court found that Congress had drawn "a distinction between the necessity for a search warrant in the searching of private dwellings and in that of automobiles and other road vehicles," and that such a distinction was consistent with the Fourth Amendment. *Id.* at 147. In an extensive opinion, the Court traced the historical basis for this distinction to legislation passed contemporaneously with the adoption of the Fourth Amendment. *Id.* at 150-153. These statutes consistently recognized (*id.* at 153):

a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

Thus, the initial justification for the establishment of the automobile exception clearly was the impracticability of obtaining a warrant because of the ready mobility of vehicles. See generally *United States v. Ross*, 456 U.S. 798, 804-809 (1982).

In *Chambers v. Maroney*, 399 U.S. 42 (1970), the Court reaffirmed the principle of *Carroll* that a warrantless search of a vehicle is permitted because "the opportunity to search is fleeting since a car is readily movable." *Id.* at 51. The Court rejected the suggestion that the vehicle should have been seized on the basis of probable cause, but not searched until a warrant could be obtained, reasoning that, in terms of the practical consequences, there was no constitutional difference between an immediate search without a warrant and the vehicle's immobilization until a warrant could be obtained. *Id.* at 51-52. Thus, as the Court recently explained again in *Ross*, the "impracticability of securing a warrant in cases involving the transportation of contraband goods" traditionally has provided part of the reason for permitting warrantless searches of vehicles. 456 U.S. at 806. "Given the nature of an automobile in transit, the Court [has] recognized that an immediate intrusion is necessary if police officers are to secure the illicit substance." *Id.* at 806-807. The rule permitting a warrantless search is one that applies to the

generality of situations and does not depend on an assessment of the degree of exigency caused by the vehicle's immobility in a particular factual context. See *id.* at 807 n.9; *Colorado v. Bannister*, 449 U.S. 1 (1980).

Subsequent to *Carroll* and *Chambers*, however, the Court also identified a second justification for the automobile exception, namely, the reduced expectation of privacy that an individual has in the contents of an automobile. As the Court explained in *United States v. Chadwick*, 433 U.S. 1, 12 (1977) (quoting *Cardwell v. Lewis*, 417 U.S. 583, 590 (1974) (plurality opinion)):

One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects \* \* \*. It travels public thoroughfares where both its occupants and its contents are in plain view.

Because of the reduced risk that a police officer's mistaken assessment of probable cause will result in a serious privacy intrusion, there is insufficient need for the prophylactic measure of a warrant in connection with a vehicle search. See also *United States v. Knotts*, No. 81-1802 (Mar. 2, 1983), slip op. 5; *Rakas v. Illinois*, 439 U.S. 128, 153-155 (1978) (Powell, J., concurring); *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976); *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973).

While the Court in recent years has focused on the reduced expectation of privacy in a vehicle as an important basis for the automobile exception to the warrant requirement, it is clear that the Court has not deviated from the view that the mobility of a vehicle remains a significant factor in assessing the need for

a warrant. To the contrary, the Court has characterized the basis for the automobile exception as a "twofold" rationale. See *South Dakota v. Opperman*, 428 U.S. 364, 367-368 (1976); see also *Arkansas v. Sanders*, 442 U.S. 753, 761 (1979); *United States v. Chadwick*, 433 U.S. at 12-13; *Cady v. Dombrowski*, 413 U.S. at 442. Thus, the California Supreme Court's exclusive focus on the expectation of privacy in a motor home, while ignoring its inherent mobility, significantly diverges from the analysis suggested by this Court's decisions.

**B. The Diminished Expectation Of Privacy Inherent In Any Vehicle And The Mobility Of A Motor Home Justify A Warrantless Search Of Such A Vehicle When It Is Being Used For Transportation**

The California Supreme Court aptly described (Pet. App. A17) the issue in this case as a "hybrid" in terms of Warrant Clause jurisprudence. A motor home plainly is a vehicle and shares most of the characteristics of an automobile that make a warrantless search of an automobile reasonable under the Fourth Amendment; at the same time it possesses some of the attributes of a permanent residence that traditionally have justified the imposition of a warrant requirement. Whether a warrant is required to search a motor home on the basis of probable cause is a difficult question that explores the limits of the automobile exception. Thus, we do not quarrel with the California Supreme Court's recognition that a motor home should not mechanically be treated the same as an automobile for these purposes simply because it is mobile. But, by the same token, the court erred in concluding that a motor home should automatically be treated the same as a residence simply because it can be used as a living accommodation. In

our view, motor homes are so similar to automobiles and other vehicles in important respects that, in certain well-defined circumstances, it is reasonable to permit them to be searched without a warrant.

It is undeniable that greater privacy interests may be implicated by a search of a camper or motor home than of a conventional automobile. When a vehicle is used in part as a place to live rather than exclusively as a means of transportation, a search is more likely to reveal personal effects that implicate significant privacy interests. And a "motor home" may have features that enable individuals to shield the interior from the view of outsiders more effectively than in a conventional automobile.<sup>4</sup> Given the importance of the expectation of privacy factor to the rationale underlying the automobile exception, these factors suggest that the doctrine should not uncritically be applied to motor homes simply because they are movable vehicles.

There are important countervailing considerations, however, that strongly indicate that warrantless searches of motor homes should be permitted. First, an individual's expectation of privacy in a vehicle is necessarily limited, regardless of the use to which it is put; if a motor home is more "private" in some sense than a conventional automobile, it nonetheless cannot be equated with a permanent residence. See *Rakas v. Illinois*, 439 U.S. at 154 (Powell, J., con-

<sup>4</sup> The nature and effectiveness of these features will vary depending upon the type of vehicle. Large motor homes designed for use as a residence for an extended period of time will have built-in features to prevent outsiders from looking in. But almost any vehicle, even one not originally designed for use as a residence at all, can be altered to increase the privacy of the occupants to some degree, for example by installing curtains.

curing). This Court has emphasized repeatedly that all motor vehicles are subject to a wide range of regulatory intrusions and inspections, which necessarily circumscribe the degree of privacy that can be expected. See *United States v. Chadwick*, 433 U.S. at 12-13; *South Dakota v. Opperman*, 428 U.S. at 367-369; *Cady v. Dombrowski*, 413 U.S. at 441-442. In addition, there is a significant possibility that a vehicle can become disabled or involved in an accident on the public highways, necessitating a privacy intrusion by the police. These considerations apply with equal weight to "motor homes" (except where they are affixed to a permanent site) as to conventional automobiles.<sup>5</sup> Thus, even focusing on the expectation of privacy rationale alone, it is apparent that the California Supreme Court's treatment of motor homes as indistinguishable from ordinary residences is flawed. So long as a motor home is susceptible to routine police contact because of state inspection and traffic laws, one cannot reasonably expect

<sup>5</sup> Moreover, the physical privacy aspect of some vehicles that would apparently be encompassed as "motor homes" by the court below does not approach that of the home. Vans and pickup trucks with simple caps are not substantially more private in customary use than an ordinary passenger car. Even vehicles that are originally designed with heightened privacy in mind are necessarily less private than houses or apartments. Because vehicles travel and often are parked on the public thoroughfares, there is nothing to prevent inquisitive outsiders from approaching them much more closely than they could a house. Those measures that ordinarily are taken to cover up the windows in a vehicle are not generally sufficient, as a practical matter, to protect fully against intrusion by the curious outsider who actually approaches the vehicle. See, e.g., *United States v. Lovenguth*, 514 F.2d 96, 98 (9th Cir. 1975).

the same degree of privacy in such a vehicle as in a permanent residence or even a motel room.

Second, the mobility aspect of the automobile exception rationale fully applies to motor homes. To the extent it is impracticable to obtain a warrant before searching a vehicle because of its mobility, the decision below will significantly hamper law enforcement officers in their ability to seize contraband and evidence when they have probable cause to believe that it is contained in a vehicle that can be characterized as a "motor home." Presumably, when the police have such probable cause, they will have to either let the vehicle go on its way or attempt to seize and immobilize it pending application for a warrant. Putting the officers to this choice is at odds with the consistent thread of the automobile exception decisions, which recognize that the Constitution does not express a preference for immobilization of a car pending a warrant search over conducting an immediate warrantless search. See *Ross*, 456 U.S. at 821 n.28; *Chambers*, 399 U.S. at 51-52. In addition, it may well be that seizing the vehicle is not a feasible option at all. The Court has recognized that it is not always possible for police to seize and securely hold a vehicle (see *Chadwick*, 433 U.S. at 13 n.7; *Opperman*, 428 U.S. at 379 (Powell, J., concurring)), and this is particularly true of campers, which may be oversized and oddly shaped.

Moreover, in important respects the interests of the suspect himself may be harmed by a rule prohibiting a warrantless search. In cases where the search will not uncover any evidence (which are, after all, those cases for which the protections of the Warrant Clause are most useful), a suspect may be unnecessarily deprived of his property for a substantial period of time while a warrant is sought. Indeed, in the com-

mon situation where the probable cause to believe that contraband will be found in the vehicle also provides the basis for arresting the suspect, a warrant requirement may significantly prolong the period during which the individual will be subject to detention. In these situations, especially where the vehicle does not in fact contain contraband and a search would therefore eliminate the basis for arrest, it would ordinarily be preferable from the suspect's viewpoint that an immediate warrantless search be conducted that will exonerate him and spare him the undesirable consequences of continuing suspicion pending application for a warrant.<sup>6</sup>

It is important not to minimize the problems for law enforcement agencies that will be occasioned by the decision below. The larger capacity and enclosed space of the type of vehicles that the California court has carved out of the automobile search doctrine may make them suitable for use as temporary residences, but it also makes them especially convenient and effective instruments for smuggling contraband or illegal aliens.<sup>7</sup> The problems created for the police are

<sup>6</sup> It is not a complete answer to this problem that the suspect can consent to a search of the vehicle if he desires to avoid the delay involved in obtaining a search warrant. Cf. *Arkansas v. Sanders*, 442 U.S. at 764 n.12. A police officer is under no obligation to proceed with an immediate search simply because the suspect has consented to it. Given the possibility that an apparent consent to search will later be determined to have been given involuntarily (see generally *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973)), it will often be prudent for an officer to decline to conduct a consent search if he believes he has probable cause and knows that a warrantless search would be held unlawful if the consent is successfully attacked.

<sup>7</sup> A sampling of the reported cases involving searches of campers confirms that they often are used for hauling large

exacerbated by the broad spectrum of vehicles potentially covered by the court's opinion, which is bound to leave officers uncertain as to their obligations. Because of its focus on the privacy implications of temporary residential use, the California Supreme Court's decision would appear to apply to any vehicle used for living purposes. As Justice Richardson points out in his dissent, the holding therefore goes far beyond large recreational vehicles designed as motor homes and extends to vans and pickup trucks used for sleeping and perhaps even to ordinary trucks. See Pet. App. A46-A47. Under the decision below, the courts could be faced with a new and intractable area of litigation—whether particular measures taken by a vehicle owner (such as putting curtains on the windows or a cap on a pickup truck) make the vehicle sufficiently like a home to require imposition of a warrant requirement.

As a practical matter, moreover, the police are ill-equipped to deal with this type of amorphous, fact-specific legal area that would be clarified only slowly on a case-by-case basis and would always remain to some degree uncertain and unpredictable (see, e.g., *Arkansas v. Sanders*, 442 U.S. at 771-772 (Blackmun, J., dissenting)); rather, they are best able to

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loads of drugs, particularly marijuana, or illegal aliens. See, e.g., *United States v. Cortez*, 449 U.S. 411 (1981); *United States v. Salinas-Calderon*, 728 F.2d 1298 (10th Cir. 1984); *Sharpe v. United States*, 660 F.2d 967 (4th Cir. 1981), vacated, 457 U.S. 1127 (1982), on remand, 712 F.2d 65 (1983), petition for cert. pending, No. 83-529; *United States v. Almand*, 565 F.2d 927 (5th Cir.), cert. denied, 439 U.S. 824 (1978); *United States v. Curtis*, 562 F.2d 1153 (9th Cir. 1977), cert. denied, 439 U.S. 910 (1978); *United States v. Lovenguth*, 514 F.2d 96 (9th Cir. 1975); *United States v. Cusanelli*, 472 F.2d 1204 (6th Cir.), cert. denied, 412 U.S. 953 (1973).

perform their duties in an efficient and constitutional manner if there exists a relatively clear and easily administrable set of rules to guide them. See, e.g., *Oliver v. United States*, No. 82-15 (Apr. 17, 1984), slip op. 9-10; *New York v. Belton*, 453 U.S. 454, 458 (1981). The imprecision of the decision below is calculated to induce cautious police officers to be overly restrictive in assessing their authority, perhaps leading them to refrain from conducting a warrantless search of almost any vehicle different from a conventional automobile. This would exclude a substantial percentage of the vehicles on the road from the confines of the automobile exception and, more important, would provide drug smugglers with an easy and inexpensive way to avoid on-the-spot probable cause searches—by using a van or pickup truck or perhaps simply by putting up curtains on a car.

Thus, there are serious problems with the refusal of the court below to extend the "automobile exception" under any circumstances to a vehicle that is usable for residential purposes. It is significant to note in this connection that this Court has never suggested that the exception is limited only to automobiles. In *Carroll*, the Court equated ships, wagons, and automobiles (267 U.S. at 153) in recognizing that it was not appropriate to impose the same warrant requirement on the search of vehicles as on the search of homes. The Court's review of the historical development in this area showed that wagons and ships could be searched without a warrant, even though they were used as temporary residences just as surely as motor homes are. See also *United States v. Villamonte-Marquez*, No. 81-1350 (June 17, 1983). And, since *Carroll*, the Court has continued to recognize that the exception to the warrant requirement for vehicles is not restricted to automobiles. See,

e.g., *Cardwell v. Lewis*, 417 U.S. at 589 (plurality opinion); *Chambers v. Maroney*, 399 U.S. at 48. The fact that a vehicle theoretically may be used as a residence does not alter the basic fact that "its function is transportation." *Cardwell v. Lewis*, 417 U.S. at 590 (plurality opinion).

This is not meant to suggest that the residential function of motor homes must be ignored and that they must be treated precisely like any other vehicle simply because they are mobile. It does suggest, however, that the motor home situation is one that requires an accommodation between society's interest in effective law enforcement, which is reflected in a rule permitting warrantless searches, and protection of the individual's privacy interest, which is reflected in the warrant requirement. This accommodation lies between the two extremes of either never or always permitting a warrantless search of a motor home and can, we believe, be struck in a fashion that is capable of being understood and applied by the police without seriously compromising the relevant interests.

In our view, it is important to draw a distinction between a motor home that is primarily functioning as a vehicle and one that is primarily functioning as a residence. When a motor home is clearly being used as a residence, such as when it is stationed at a campground site or otherwise hooked up to utility connections, the rationale for applying the automobile exception is outweighed by the enhanced privacy expectation inherent in its residential use. By the same token, a "mobile home" that is designed to be affixed to a relatively permanent site and is not subject to state motor vehicle registration laws is not really a "vehicle" and ought not to be subject to warrantless

search even when it is being transported on the highways to a permanent site. However, a motor home that is treated by the state as a vehicle for regulatory purposes and that is come upon by the police when it is being used as a vehicle should be retained within the automobile exception.

When a motor home is being used in a way that its "primary function is transportation" (*United States v. Chadwick*, 433 U.S. at 13), the rationale underlying the exception to the warrant requirement is not defeated by the possibility that the vehicle can also be used as a residence. For example, when such a vehicle is stopped while traveling on a public highway or is found parked in a location inappropriate for residence, it is primarily a vehicle for transportation and should be treated as such under the Fourth Amendment. In such a situation, there are strong societal interests in dispensing with the warrant requirement; at the same time, the individual's privacy interest is limited because "individuals always [have] been on notice that movable vessels may be stopped and searched on facts giving rise to probable cause that the vehicle contains contraband, without the protection afforded by a magistrate's prior evaluation of those facts" (*Ross*, 456 U.S. at 806 n.8). This limited privacy interest is adequately protected by the requirement that officers have probable cause before conducting a search. See *id.* at 807 n.9.<sup>8</sup>

<sup>8</sup> Our approach would thus draw the line between "vehicles" and "residences" not on the basis of the attributes of the vehicle, but on the basis of whether it is at least temporarily affixed to a site or is fully mobile. If this Court concludes that such a standard provides insufficient protection to the privacy interest at stake in this class of cases, it must then adopt an approach that attempts to draw distinctions among different kinds of vehicles. If that approach is taken, we would suggest

Applying these principles to this case, it is our view that the court below erred. The facts do not indicate that the motor home here was being used even temporarily as a fixed residence. Rather, it was parked in a public place adjacent to downtown streets and thus apparently was functioning primarily as a vehicle for transportation. In these circumstances, it was reasonable within the meaning of the Fourth Amendment for the police officers to search it on the basis of probable cause without a warrant.

that the most appropriate place to draw the line is between vehicles built specifically for use as a living accommodation—for example, with features such as built-in beds and kitchen facilities—and other vehicles such as vans and camper trucks that are designed primarily for transportation but are capable of being used or converted to use as a place to live. In addition to the reasons given in the body of this brief, we have misgivings about this approach because, while it is more workable than the California court's broad, unfocused conception of a "motor home," it would still create problems of definition for the officer in the field, given the wide spectrum of vehicles that he may encounter in the course of his duties. See pages 15-17, *supra*. We maintain that the best way to establish a sound, bright-line rule is through the approach outlined in the body of this brief; any attempt to focus on the nature of the vehicle itself, including the approach taken by the court below, rather than our proposal to focus on whether the circumstances indicate that the vehicle is being used primarily as a means of transportation, inevitably will lead to litigation over precisely where the line should be drawn. We note only that, if the Court determines that *some* distinction should be drawn among different types of vehicles, the distinction that best accommodates society's interest in effective law enforcement with individual privacy expectations is one that excludes from the automobile exception a narrow category of vehicles that are specifically designed and built for use as mobile residences. If the Court adopts this approach, it would be appropriate to remand this case for development of the record concerning the nature and characteristics of the vehicle involved here.

## CONCLUSION

The judgment of the Supreme Court of California should be reversed.

Respectfully submitted.

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